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The CCJ has spoken

By *Stabroek News* On July 13, 2019 @ 2:01 am In Editorial |

In its consequential orders yesterday, the Caribbean Court of Justice (CCJ) set out pithily that the Granger administration fell from office on December 21, 2018 and must now only function as a caretaker government for the purposes of holding general elections in three months from June 18 unless there is an enlargement of that period with the concurrence of the opposition.

There must now be a formal resignation by the Cabinet and President Granger as the head of the Cabinet and a desisting from actions that would connote the normal functioning of the government. The ruling read by President of the CCJ, Justice Saunders was crystal clear on this. He said: "It is important, however, that the Court makes this point. In mandating that the Government shall remain in office notwithstanding its defeat and the resignation of the President and the Cabinet, Article 106 envisages that the tenure in office of the Cabinet, including the President, after the Government's defeat, is on a different footing from that which existed prior to the vote of no confidence...

"By convention, the government is expected to behave during this interim period as a caretaker and so restrain the exercise of its legal authority. It is this caretaker or interim role that explains the three month deadline, in the first instance, that the Article lays down, in principle, for the holding of the fresh elections".

President Granger and his senior officials have previously rejected the view that they must function as a caretaker government in the aftermath of the motion of no confidence. The President himself must now advise the public on what steps his government will take to function in a caretaker mode. Importantly, all of his senior government officials must be on board and state expenditure on anything other than essential spending must be curtailed or at the very least discussed with the opposition. It would also unfortunately mean that legislation, particularly for the oil industry, would be left in limbo.

Earlier in his brief ruling Justice Saunders underlined again how the provisions of the constitution relating to the no confidence vote had been clear from the inception.

He stated: "The judiciary interprets the Constitution. But, as we intimated in our earlier judgment, these particular provisions require no gloss on the part of the Court in order to render them intelligible and workable. Their meaning is clear and it is the responsibility of constitutional actors in Guyana to honour them. Upon the passage of a vote of no confidence, the Article requires the resignation of the Cabinet including the President. The Article goes on to state, among other things, that notwithstanding such resignation, the Government shall remain in office and that an election shall be held 'within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine ...' The Guyana Elections Commission ... has the responsibility to conduct that election and GECOM too must abide by the provisions of the Constitution".

General and regional elections now have to be held by September 18. The fly in the ointment is the appointment of a new GECOM Chairman. Emissaries of President Granger and Mr Jagdeo have failed in three meetings to make any headway. Political dialogue in this country on any matter has been a farce for such a long time that it boggles the mind that it is still done. Nevertheless, the President and the Opposition Leader now have a constitutional responsibility to select a new Chairman of GECOM with the "utmost urgency" as stated yesterday by Justice Saunders in the court's ruling on the appointment of the GECOM Chairman, Justice Patterson.

He said: "It is now a matter of the greatest public importance that the President and the Leader of the Opposition should, as soon as possible, embark upon and conclude the process of appointing a new GECOM Chairman. This imperative is now of the utmost urgency in light of our decision in the no confidence motion cases that the motion was validly passed thereby triggering the need for fresh general elections".

In his ruling yesterday, Justice Saunders also cited the previous guidance on selecting a new chairman provided by the CCJ on June 18 as follows:

"The requirement for 'meaningful consultation' between the Leader of the Opposition and the non-governmental political parties that may be represented in the National Assembly is clear and needs little elaboration. What is not so clear is the process that should be followed to accommodate the spirit of consensus that must prevail between the President and the Leader of the Opposition. The Constitution envisages that this process will culminate in a list of six names being presented to the President, none of whom is unacceptable to the President. This ultimately gives the President the opportunity to select any one of those six persons as Chairman. The question is how do these two constitutional actors interact with each other so as to arrive at that culmination? We are of the view that the most sensible approach is that before a list is submitted, the Leader of the Opposition and the President must communicate with each other in good faith on, and perhaps even meet to discuss, eligible candidates for the position of Chairman. The aim of these discussions must be to agree the names of six persons who fit the stated eligibility requirements and who are not unacceptable to the President. In this regard, the Constitution anticipates that the Leader of the Opposition and the President will conduct themselves in a reasonable and responsible manner, eschew partisanship and seek the best interests of the Republic and the Guyanese people".

It is now a matter of public record as ruled by the CCJ that President Granger acted unconstitutionally in the unilateral appointment of Justice Patterson. This act of unilateralism followed the submission of three lists with a total of 18 names by the Opposition Leader. While those lists were not pristine, all together they contained sufficient worthy names to give the President the basis for making a choice. Since it was his actions that were found wanting and violating constitutional prescriptions, a special onus is now on President Granger to show statesmanship and to select a new chairman from a list of six names "not unacceptable" to him to be submitted by the Opposition Leader.

It is worth noting that President Granger is the only leader to have rejected a list of candidates "not unacceptable", not once, but thrice. Former Chairmen Rudy Collins, Edward Garnett Hopkinson, Doodnauth Singh, Joe Singh and Steve Surujbally were selected from lists of six names submitted by the various Opposition Leaders. None of those lists would have been considered perfect so President Granger defied precedent by his untoward rejection of three lists.

The CCJ has spoken and urgent action must now be taken by President Granger and Mr Jagdeo for the appointment of a GECOM Chairman so that general elections can be held within three months. The interests of the country and its people will be placed at further risk the longer this period of instability is allowed to persist.

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